

2006-92-w/s. Application of Carolina Water Service, Incorporated for Adjustment of Rates and Charges for the Provision of Water and Sewer Service.

As hearing officer, I am responding to Paul D. Hershey's email of August 24th relaying a request by Mr. Don Long that the Commission set aside one and one half hours of time for Mr. Long to testify at the final hearing to be held in the above captioned matter. Carolina Water Service ("CWS")'s attorney, John M.S. Hoefer objected to the request by his email and letter of the same date. A response to Mr. Hoefer followed from Mr. Hershey (copies of all documents are attached hereto). My ruling on Mr. Long's request and the objections presented follows:

1. The Commission will allow Mr. Long to present his testimony on the morning of September 7th at such time as it finds appropriate for receiving testimony from public witnesses. If Mr. Long desires to use a PowerPoint presentation, he may avail himself of the equipment in the hearing room provided for that purpose. He should provide the Commission with a copy of his presentation at least forty-eight hours before the hearing so that the staff may ensure its compatibility with the Commission's presentation equipment.
2. Mr. Long has requested one and a half hours to present his testimony. While the Commission appreciates Mr. Long's efforts to provide useful information to the Commission, for purposes of judicial economy, I urge him to keep his testimony succinct, and to limit it to no more than sixty-minutes.
3. CWS's request that Mr. Long reduce his proposed testimony to writing and provide it to all parties no later than August 31, 2006, is granted; additionally, Mr. Long shall prefile his proposed testimony with the Commission. In the alternative, Mr. Long has the option of making himself available to the parties for a deposition no later than August 31, 2006 at a location in York County.
4. CWS's request that it be granted permission to present rebuttal testimony at the hearing on September 7th and 8th is granted with respect to all of the parties. CWS and the ORS shall have the right to offer rebuttal testimony as requested, provided that such rebuttal testimony is prefiled with the Commission and served on all parties no later than the close of business on September 6, 2006.

Mr. Hoefer argued in his correspondence that the Commission had not requested that Mr. Long offer additional testimony, and had merely asked that he be present to “answer questions or rebut any other information that was there”. Letter of John M.S. Hoefer *citing* Tr. p. 38, ll.11-25. CWS’s citation to a request from Commissioner Fleming is accurate; however, her request was followed by additional colloquy between Chairman Mitchell and Mr. Long which broadened the scope of the request for testimony. Tr. pp. 38, l. 24 to 39 line 3. This expansion was recognized in CWS’s objection at the hearing, which stated in part that:

Mr. Terreni [*acting as counsel to the Commission*] very clearly stated at the outset of the proceeding if someone testifies tonight, they would not be allowed to come to Columbia and testify.... so we would object to it on that basis.

Tr. pp. 39, line 20 – p. 40 line 4.

Chairman Mitchell’s final ruling on the request and the objection was that “we’re going to allow what we’ve already told Mr. Long, that he can come testify”. Tr. p. 40, ll. 13-18 (*emphasis added*). In light of this colloquy, and the language of the ruling, I find that the Commission intended to vary from its standard procedure and did allow Mr. Long to present public testimony at the final hearing.

CWS’s arguments that neither Mr. Long nor Mr. Hershey may appear before the Commission in a representative capacity on behalf of an incorporated entity or a committee are correct; such representation by an individual other than a lawyer would be contrary to the Commission’s rules and the South Carolina Supreme Court’s Rules governing the practice of law. Mr. Long, and any other individual who wishes to present public testimony at the hearing, may only testify on his own behalf. Mr. Hoefer is correct that any interested organization that wishes to participate in the proceedings would have to do so through counsel, and if necessary, make the necessary motions to waive any applicable deadlines previously established by the Commission.

A formal order or directive will follow.

Charles L.A. Terreni
Hearing Officer

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August 24, 2006

*ALSO ADMITTED IN TX
**ALSO ADMITTED IN VA

VIA ELECTRONIC AND U.S. MAIL

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Drive
Columbia, South Carolina 29210

RE: Application of Carolina Water Service, Inc. for adjustment of rates and charges
for the provision of water and sewer service; Docket 2006-92-WS

Dear Mr. Terreni:

I am writing to you in your capacity as Hearing Officer in the above captioned docket to respond on behalf of the Applicant, Carolina Water Service, Inc., to the August 24, 2006 email you received from Mr. Paul Hershey regarding testimony and a power point presentation by Mr. Don Long on September 7, 2006. I am also writing to request certain relief in the event that the Commission intends to permit such testimony and presentation.¹

I would begin by noting that there is nothing in the record of the night hearing that reflects that the Commission requested that Mr. Long make a power point presentation or offer additional testimony as Mr. Hershey's email suggests. To the contrary, Mr. Long was requested "to be in the hearing to answer questions or rebut any other information that was there" and was informed that he would be "allow[ed] to make a response to whatever else is being presented." Hearing #10786, Docket No. 2006-92-WS, June 12, 2006, Tr. p.38, ll. 11-25. Therefore, CWS would object to any "testimony" or power point presentation that Mr. Long may offer that goes beyond answering questions that he may be asked or rebutting information already in the record of this case.

Moreover, there is nothing in the record of the night hearing that supports the assertion of Mr. Hershey that the Commission has requested testimony from the "Water Committee from the Lake Wylie Water District of York County." In addition to the fact that Mr. Long was only requested to appear to answer questions and rebut or respond to other information in the record,

¹ Any testimony that Mr. Long may be allowed to give at the merits hearing in this matter will be the subject of a renewed objection by CWS consistent with the objection made on its behalf at the June 12, 2006 night hearing in this matter.

Continued . . .

no entity known as the "Water Committee from the Lake Wylie Water District of York County" was mentioned at the June 12 night hearing. Nor was any such entity requested by the Commission to appear at the merits hearing in this case. Also, and as Mr. Hershey's email reflects, the "Water Committee from the "Lake Wylie Water District of York County" has made no filing in this docket indicating that it, or its representative, desired to testify as was required on or before May 6, 2006 per the terms of the notice of filing and hearing in this docket. CWS is unaware of any basis upon which the River Hills Community Association, Inc. ("RHCA"), which is the organization by which Mr. Hershey is employed, may assign to another entity the right to testify and present evidence at a hearing. Similarly, CWS is unaware of any basis upon which Mr. Hershey, who is not a lawyer, may represent either RHCA or the "Water Committee from the Lake Wylie Water District of York County" with respect to the matters raised by his email message to you. For each of these reasons, CWS would further object to any testimony or presentation by Mr. Long at the merits hearing on behalf of any entity.

However, if the Commission is disposed to allow Mr. Long to give testimony and make a power point presentation, for himself or on behalf of any entity, CWS moves that his proposed testimony be reduced to writing and that this written testimony and his proposed power point presentation be provided to the parties not later than August 31, 2006, so that reasonable opportunity to prepare cross examination is provided to all parties of record. CWS submits that it is entitled to reasonable notice regarding the content of such testimony and presentation and an opportunity to rebut the content of same. Because neither Mr. Long nor the entities referenced in Mr. Hershey's email are parties of record, CWS is unable to obtain discovery which would protect its constitutional rights to administrative due process in this regard.

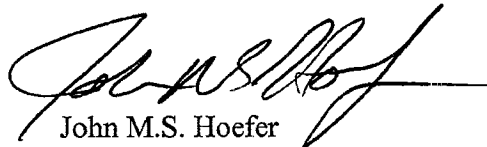
Alternatively, CWS would move that it be granted permission to depose Mr. Long on August 31, 2006, in York County at a place convenient to him.

Finally, CWS would move that it be permitted to present rebuttal testimony with respect to Mr. Long's written testimony and presentation at the merits hearing scheduled for September 7th and 8th should same be admitted in the record.

Please let me know if you have any questions or if I can be of any assistance.

Sincerely,

WILLOUGHBY & HOEFER, P.A.



John M.S. Hoefer

JH/amw

cc: C. Lessie Hammonds, Esquire
Shannon Bowyer Hudson, Esquire
Mr. Paul Hershey
(all via electronic and U.S. mail).

Terreni, Charles

From: Paul Hershey [rhypaul@comporium.net]
Sent: Thursday, August 24, 2006 5:53 PM
To: John Hoefer; Terreni, Charles
Cc: ihammon@regstaff.sc.gov; nsedwar@regstaff.sc.gov; shudson@regstaff.sc.gov
Subject: Re: Docket 20006-92-WS Carolina Water

Mr. Terreni At the start of Don Longs testimony he stated that he was speaking representing a committee of concern citizens we have NO official name and that was a choice of words to represent the committee. The PSC also stated about additional information and we again have put together a presentation that we again as stated don't know if the numbers are accurate. Seems to me that CWS if interested would provide the accurate numbers to provide a decision based on all information for full disclosure to the customer base Regards Paul

----- Original Message -----

From: John Hoefer
To: Paul Hershey ; charles.terreni@psc.sc.gov
Cc: ihammon@regstaff.sc.gov ; nsedwar@regstaff.sc.gov ; shudson@regstaff.sc.gov
Sent: Thursday, August 24, 2006 4:32 PM
Subject: RE: Docket 20006-92-WS Carolina Water

Dear Mr. Terreni: Attached please find a .pdf of my letter to you of today's date responding to Mr. Hershey's email, which includes a motion and request for alternative relief. The original of this letter is being mailed to you today. I would appreciate very much your advising me of your ruling at your earliest opportunity. Thank you.

John Hoefer

From: Paul Hershey [mailto:rhypaul@comporium.net]
Sent: Thursday, August 24, 2006 10:48 AM
To: charles.terreni@psc.sc.gov
Cc: ihammon@regstaff.sc.gov; John Hoefer; nsedwar@regstaff.sc.gov; shudson@regstaff.sc.gov
Subject: Docket 20006-92-WS Carolina Water

Mr. Terreni Docket 2006-92-WS Will be heard by the Public Service Commission on the 7th and 8th of Sept 2006 starting at 10:30am the morning of the 7th of Sept. During the public meeting held here on June 12th, at River Hills Community Church, the commission requested testimony be presented by Mr. Don Long and the Water Committee from the Lake Wylie Water District of York County. This testimony will require one and a half hours, the time allotted in the 24 April 2006 letter from River Hills Community Association. This testimony will be done through a power point presented as was done during the public hearing on June 12th, 2006. If equipment required for the presentation is not available we are and will provide our own equipment. This correspondence is sent requesting that the presentation be presented at 10:30 7th of Sept 2006 If this time is not available we are requesting to be heard the morning of the 7th of Sept 2006

As members of the Public Service Commission you are aware that the public meeting for the Catawba River Basin transfer is being heard in Hickory, NC at 7pm on the 7th of Sept 2006. This transfer will directed effect the life style of the entire Catawba basin and the areas of Lake Wylie. If the ability to present testimony is available the morning of the 7th. We will be able to present at both hearings, and protect the lifestyle of the community.

Paul D. Hershey CMCA, AMS
 River Hills Community Association
 General Manager
 (803) 831-8214
 (803) 831-8215) Fax

8/25/2006

Terreni, Charles

From: John Hoefer [jhoefer@willoughbyhoefer.com]
Sent: Tuesday, August 01, 2006 4:11 PM
To: Terreni, Charles
Cc: Jeff Nelson
Subject: Tega Cay Water Service, Inc.; Docket No. 2006-97-WS
Follow Up Flag: Follow up
Flag Status: Red

Dear Mr. Terreni: I am writing to you in your capacity of Hearing Officer in the above-referenced docket to make two requests.

First, Tega Cay Water Service, Inc. ("TCWS") and the Office of Regulatory Staff ("ORS") jointly request that the Commission allow the parties to present the testimony of their cost of capital witnesses on Tuesday August 22, 2006 at the commencement of the evidentiary hearing immediately following the statements of any public witnesses. The reason for this request is that ORS's cost of capital witness may have a need to travel on August 23, 2006; additionally, since both witnesses are from out of town, all parties will be able to reduce expenses associated with the case if their testimonies can be given on August 22. TCWS's cost of capital witness is Pauline M. Ahern and ORS's cost of capital witness is Randy Woolridge.

Second, TCWS requests that the record in Docket No. 2006-97-WS be left open at the conclusion of other testimony on August 22 or 23 to permit one of its rebuttal witnesses, Converse Chellis, to present his testimony at a later time which would be convenient to the Commission and ORS. I would note that Mr. Chellis will be a witness in Docket No. 2006-107-WS, which is scheduled for hearing on August 28, 2006, and in Docket No. 2006-92-WS, which is scheduled for September 7 and 8 he can be available at the conclusion of either of the hearings in these cases to present his rebuttal testimony in Docket No. 2006-97-WS. The reason for Mr. Chellis's unavailability on August 22 and 23 is that he is scheduled to attend a continuing education conference out of state on those dates which he needs to complete in order to retain certification as an auditor for federal government purposes qualified to conduct accounting peer reviews. He is unable to reschedule his conference in time to meet his certification deadline. ORS is agreeable to Mr. Chellis testifying on either August 28 or September 7-8. From a continuity standpoint, I would observe that August 28 is probably the better date.

Any consideration you and the Commission may give to the foregoing requests would be greatly appreciated. If you need any additional information, please do not hesitate to contact me. With best regards, I am,

Sincerely,

John M.S. Hoefer, Esquire
Willoughby & Hoefer, P.A.
930 Richland Street
Post Office Box 8416
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1 single family equivalence are for those customers. Some of them, like Camp
2 Thunderbird for instance, very heavy; they use the equivalent of 72 homes over
3 there.

4 Q Now looking at that, I was going to ask this of you. Again, I'm not trying to question
5 the foundation of what you presented here, which again was very impressive.
6 When you talk about the weight in terms of the customer base, do you still feel that
7 the proportion that is charged here is out of sync?

8 A [inaudible] *[Laughter from audience]*

9 CHAIRMAN MITCHELL: Any other questions?

10 COMMISSIONER FLEMING: Mr. Chairman.

11 CHAIRMAN MITCHELL: Please, Commissioner
12 Fleming.

13 COMMISSIONER FLEMING: I don't have a question,
14 but what I wanted to request, if possible. Mr. Long had a lot
15 of substantive information and figures in his report. He asked
16 to have a chance to come back if other sources came up
17 with different figures. We normally say that that person
18 cannot testify again, but would he be – would it be possible
19 for him to be in the hearing to answer questions or rebut any
20 other information that was there. I think that would be very
21 important.

22 CHAIRMAN MITCHELL: Yes, sir?

23 MR. LONG: I can certainly try.

24 CHAIRMAN MITCHELL: We'll at least allow a
25 response to whatever else is being presented. We did need

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1 to know a little bit more in detail how you came to some of
2 the numbers that you were quoting there.

3 MR. LONG: I'll try to provide that.

4 CHAIRMAN MITCHELL: Yes, sir, if you could, you
5 know, the exhibits that we've asked you to provide to us –
6 very specific how you arrived on certain numbers, we
7 certainly need that.

8 MR. LONG: I can do that, sir.

9 CHAIRMAN MITCHELL: Any other questions?
10 Commissioner Howard.

11 MR. HOEFER: Mr. Chairman, please before
12 Commissioner Howard asks his questions, I need to
13 interpose an objection.

14 *[Laughter from audience]*

15 CHAIRMAN MITCHELL: Please, we do have to
16 listen and have this on tape, please. We certainly honor all of
17 your responses, but certainly we do have to take this and
18 have it all on record.

19 Mr. Hoefer.

20 MR. HOEFER: Thank you, Mr. Chairman. I think Mr.
21 Terreni very clearly stated at the outset of this proceeding if
22 someone testified tonight, they would not be allowed to
23 come to Columbia and testify.

24 *[Someone from audience speaks – inaudible]*

25 MR. HOEFER: Did you hear that, Mr. Chairman? I

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1 will – I think it was very clearly stated by Mr. Terreni at the
2 beginning of the hearing tonight that anyone who testifies
3 tonight would not be allowed to testify in Columbia. So, we
4 would object to it on that basis.

5 Additionally, we would object to it on the basis of Rule
6 501, the South Carolina Appellate Court Rules, Canon 3. We
7 would also object on the basis of Rule 614(b) of the South
8 Carolina Rules of Evidence. These people are [inaudible],
9 I'm happy to say, but to have documentation, additional
10 testimony elicited on behalf of the judicial officers of the
11 proceeding; we think is inappropriate, and we would object.

12 Thank you, Mr. Chairman.

13 CHAIRMAN MITCHELL: Okay. Mr. Hoefer, for the
14 record, we understand what you've said. But, however, we
15 had a Commissioner to specifically request a change in our
16 [inaudible] and because of that, we're going to allow what
17 we've already told Mr. Long, that he can come and testify,
18 and I'm going to rule that 501 [inaudible] of that procedure.

19 [Applause]

20 CHAIRMAN MITCHELL: Any other questions?
21 Commissioner Howard.

22 **EXAMINATION BY COMMISSIONER HOWARD:**

23 Q Mr. Long, refresh my memory if you might. 100% of the water used by the Lake
24 Wylie Franchise District [inaudible], they don't have any wells or facilities in this
25 area; all of them purchase through [inaudible] systems?

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